

DELAWARE JUSTICE REINVESTMENT TASK FORCE MINUTES FOR SEPTEMBER 26TH, 2011 MEETING

The Delaware Justice Reinvestment Task Force met at 10AM on September 26th 2011 at the Delaware State Police Troop 2 Station. The meeting was chaired by Lieutenant Governor Matt Denn. Task Force members in attendance included: Jay Lynch representing I-Adapt, State Representative Greg Lavelle, Court of Common Pleas Chief Judge Alex Smalls, Attorney General Beau Biden, Chief Deputy Attorney General Charlie Butler, Public Defender Brendan O'Neill, State Representative Melanie George, Chief Magistrate Alan Davis, R.L. Hughes representing DSHS, State Senator Liane Sorenson, Lisa Borin Ogden of VCAP, and State Senator Patricia Blevins. Consultants from the Vera Institute of Justice in attendance included; Julie James, Suzi Agha, and Ram Subramanian. Staff in attendance included: Drew Fennell of CJC, Ron Keen of CJC, Chris Kervick of CJC, Maureen Monagle of CJC, Valarie Tickle of CJC, Tom MacLeish of CJC/SAC, Charles Huenke of CJC/SAC, Philisa Weidlein-Crist of CJC/SAC, Emily Cunningham of the Lieutenant Governor's Office, and Raina Allen of the Lieutenant Governor's Office. Others in attendance included Joanna Champney of SURJ, Rick Chamberlin of The Way Home, Kathleen MacRae of ACLU-Delaware, Charles Madden of the Hope Commission, Pam Price of the State House of Representatives, Jissell Martinez of OMB, Charles Butler of the Department of Justice, Johnette Graf of the Board of Parole, George Williamson of the Board of Parole, Dana Holz, Barbara Ryan, Mary Faith Welch, and Richard Davidson.

Task Force Chair Matt Denn opened the meeting a few minutes after 10AM and the first order of business was the minutes from the August 2011 meeting which were approved.

Julie James of the VERA Institute opened the discussion regarding Task Force outreach to organizations by indicating that she and Suzi Agha had given presentations to SENTAC and to the Domestic Violence Coordinating Council. She added that presentations were pending to the Police Chief's Council, the Victim's Roundtable, and to the CJC at their annual retreat. She also indicated that presentations to community groups and/or representatives were a possibility.

The next topic was an update of the data analysis by Suzi Agha. Dr. Agha reported that the survey of probation officers was complete and that the analysis of the survey results was underway. The next PowerPoint slide was a comparison of Delaware's detention population as a percentage of total incarcerated population with other unified system states (Vermont, Rhode Island, and Connecticut). In comparing the pretrial detention percentage, it was noted that Delaware's 23% was the highest. The detention percentages of the other unified system states were 16%, 20%, and 18%. A following slide illustrated that in Delaware, Detention admissions and releases each totaled more than 17,000 in 2010. Additionally, a daily detention population snapshot showed 1,449 incarcerated persons on that particular day. It was noted that 4% of the detention admissions had 4th time or more DUI offenders. Further, individuals charged with violent

felonies represented 60% of detainees. Also, 26% of all detainees faced charges which included violation of probation.

Regarding length of stay while detained, the average was 30 days, the mode—or most frequent occurrence—was 1 day, and the median was 8 days. The average length of stay where the lead charge was a misdemeanor the average length of stay was 14.9 days. The average length of stay where the lead charge was a felony was 57.4 days. The next slide displayed the offense categories associated with the ten longest average lengths of stay. A slide was presented which indicated that the ten charge types associated with the greatest amount of bed space, which took up 87% of the bed space occupied by detentioners.

Dr. Agha then presented the next steps that Vera staff plan to undertake in the data analysis, including examining bail amounts and capias history for the detained population, as well as analysis of the sentenced population and court data. In addition, at the next meeting, staff will present results of the recently completed Probation Officer survey.

Next Julie James presented some examples of pre-trial reform efforts in other communities that had had some degree of success. Regarding pre-trial release practices, she noted at the outset that the primary purposes of pre-trial release are ensuring a defendant's appearance in court and not endangering public safety. Thus reform efforts must be consistent with those purposes. She added that the best predictors of success while being in the community while awaiting trial are no criminal record or minimal criminal record and a history of appearing in court as scheduled. She further indicated that pretrial supervision is less costly than pretrial detention, and that with appropriate screening and supports, pretrial supervision can increase appearance rates and reduce reoffending rates. Additionally, being detained while awaiting trial is a major predictor of later incarceration. A successful example is the District of Columbia Pre-Trial Services Failure to Appear Unit. After implementing this program the District of Columbia released 80% of defendants awaiting trial to that unit and of that 80%, 88% appeared at all court dates. In addition, 88% were not arrested while under pretrial supervision. Ms James noted that the key to the success of the program was the allocation of sufficient resources to the program.

A discussion that followed was initiated by Charles Butler, who asked about the validation process—specifically, what is an acceptable level of risk to public safety. He added that knowing the specifics of the validation process was critical to a review of the success of the program. He also added that the focus has been on the charge being the driving force of defendants being detained while in reality, some defendants cannot afford bail.

Judge Davis stated that a couple of problems with risk assessment instruments are that someone has to be available to complete the assessment 24 hours a day, seven days a week, and that completing the assessment adds significantly to case processing time. He added that if an assessment is completed that says that a detainee should be released but should be referred to services, that those services must be available.

Lt. Governor Denn asked how long it takes to complete a pretrial risk assessment. Julie James responded that it can range from 10-15 minutes or more, depending on the system.

Lisa Ogden asked if other states differentiate services by gender.

Brendan O'Neill indicated that each individual has a right to an individual hearing and to be evaluated individually. He added that a risk assessment instrument is similar to the "totality of the circumstances" approach currently being utilized in the J.P. Courts.

Judge Davis agreed that the "totality of circumstances" approach is a movement away from "bail guidelines".

Lt. Governor Denn suggested that if Delaware commits to implementing a risk assessment process, that the goal should be to improve on the outcomes of the current system.

R. L. Hughes asked if services are provided to pre-trial defendants in the comparison states. He added that we need to look at what works.

Attorney General Biden raised a question of how much money is spent on services for the detained pre-trial population. He followed by asking what services are being offered to individuals who are detained for 30 day periods.

Julie James presented data that indicated that in Delaware about 1.4% of the Bureau of Community Corrections caseload is comprised of defendants under Pre-trial Supervision.

Senator Sorenson said that Rhode Island, Connecticut, and Vermont may have invested justice reinvestment savings into pre-trial services efforts.

Charles Butler suggested that 30 day time served (while awaiting trial) sentences could have an impact on the detention length of stay statistics.

Chief Judge Smalls stated that the Court of Common Pleas has second bail hearings 2-3 days after receiving the case and preliminary hearings on felony offenses 10 days after receiving the case.

Lieutenant Governor Denn indicated that if we are going to recommend changes that reduce the number of incarcerated individuals, there needs to be evidence of what is working in other states.

Drew Fennell said that the next Task Force meeting would include examples of what is working in other states.

Julie James raised the topic of the survey of probation officers that was conducted. She indicated that the results should provide information concerning services that are available in the community.

Representative George stated that she would like to see data regarding what factors judges consider when sentencing probationers violators to imprisonment for their violations.

Chief Judge Smalls suggested considering learning what factors probation officers use in requesting an administrative warrant.

Julie James reported that a swift and certain sanction is a model for effective responses to violations of probation.

Attorney General Biden asked what states have had some success with Justice Reinvestment.

Senator Sorenson indicated that Kansas had had some success.

Public Comment:

Joanna Champney, representing SURJ, indicated that she has a copy of a risk assessment instrument that is used in Ohio that she can make available. She added that there was a pre-trial program in Delaware during the 1990's that performed a risk assessment function.

Kathleen MacRae, of the ACLU of Delaware, reported that the ACLU National Prison Project has released a report that provides an overview of what 6 states have done to reduce rates of incarceration in their respective states.

Rick Chamberlin, representing The Way Home, offered some vignettes illustrating some success stories of individuals who took advantage of services offered by The Way Home. Representative George added that she thinks it would be helpful to hear from probationers and suggested talking with probationers. Julie James responded that VERA and CJC would look at the feasibility of such efforts. Jay Lynch said that he would be able to bring some I-ADAPT participants to speak to the Task Force if that was requested.

Lieutenant Governor Matt Denn adjourned the meeting.